FILED
APR 18 1953
HAROLD B. WILLEY, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 728

JESSE MILLER SINCLAIR,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION AND BRIEF IN SUPPORT OF PETITION FOR CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES COURT OF CLAIMS

EDWARD L. P. O'CONNOR,
Attorney for Petitioner.

THOMAS A. McDONALD,
Of Counsel.

INDEX

PAGE

PETITION

Statement of Matter Involved 2

The Statutes Involved 3

Basis of Jurisdictiion 4

Questions Presented 4

Reasons for Writ 5

BRIEF

POINT I—The interpretation put on the statute by the Court of Claims is plainly at variance with the statute as a whole and makes the statute useless and unworkable 6

POINT II—The Court of Claims erred in dismissing the petition on motion for summary judgment 8

CASES CITED

British American Assurance Co. v. Bowen, 134 F. (2d) 256 (C. A., 10th Cir.) 10

Culpepper v. State, 4 Okl. Cr. 103, 111, pages 679, 681, 682, 31 L. R. A. N. S. 1166, 140 Am. St. Rep. 668 .. 10

Gompers v. Bucks Stove & R. Co., 221 U. S. 418 10

Holt v. United States, 218 U. S. 245 10

PAGE

Sinclair v. United States, 109 Fed. Supp. 529 ..... 1, 2
Sinclair v. United States, 338 U. S. 908 9

United States v. Sinclair, 174 F. 2d 933 2
United States et al. v. American Trucking Ass'ns, Inc., et al., 310 U. S. 534, 543 7

STATUTES CITED

Title 28, U. S. Code

Section 1495 3

Section 2513 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. ....

JESSE MILLER SINCLAIR,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Jesse Miller Sinclair, by his undersigned Attorney, prays for a writ of certiorari to review a judgment of the United States Court of Claims entered on the 21st day of January, 1953, dismissing petitioner's petition filed in said court (p. 18). The opinion of the Court of Claims is reported *sub nom Sinclair* v. *United States,* 109 Fed. Supp. 529. By his petition to the Court of Claims, Sinclair sought pursuant to Sections 2513 and 1495 of Title 28 U. S. C. A. to recover damages sustained by him by reason of an erroneous conviction in the United States District Court for the Eastern District of Pennsylvania of a crime or offense against the United States, to wit, a violation of Section 1461, Title 18, U. S. C. A., by the mailing of a certain letter on or about July 14, 1948.

The conviction was reversed by this Court by its mandate dated February 14, 1950. The opinion of this Court dated January 9, 1950 is reported at 338 U. S. 908, *sub nom, Sinclair* v. *United States.*

Statement of Matter Involved

Jesse Miller Sinclair filed a petition in the Court of Claims of the United States seeking damages in the sum of $5,000 for damages, pursuant to Sections 1495 and 2513 of Title 28, U. S. C. A. (pp. 1-4). The basis of that claim was that on February 15, 1949 he had been convicted in the United States District Court for the Eastern District of Pennsylvania of a crime or offense against the United States, to wit, a violation of Section 1461, Title 18, U. S. C. A., by the mailing of a certain letter, to his wife, on or about July 14, 1948. On March 21, 1949 he was sentenced to imprisonment for one year and one day, and was imprisoned from that date to June 30, 1949. On May 5, 1949 the United States Court of Appeals affirmed said judgment of conviction, decision reported *United States* v. *Sinclair,* 174 F. 2d 933. On June 27, 1949 this Court granted his petition for certiorari (337 U. S. 955) and he was thereafter released on bail pending decision by this Court (pp. 1-4). This Court on January 9, 1950 rendered its opinion, reported at 338 U. S. 908, reading as follows:

> "Per curiam: The judgment is reversed. United States v. Limehouse, 285 U. S. 424; Swearingen v. United States, 161 U. S. 446."

Petitioner incorporated the decision and mandate of this Court, by reference, in his petition filed in the Court of Claims (pp. 2-3).

The Court of Claims decided that the opinion and mandate of this Court established that petitioner's act, with which he was charged, constituted no offense against the

United States (p. 16). However, it held that it does not appear therefrom that the acts committed did not constitute a crime against the State of Pennsylvania, nor that his misconduct or neglect did not bring about his prosecution (pp. 16-17). It held that the mailing of the letter, which was the only act charged in the indictment, constituted no crime against the State of Pennsylvania but that it did not know but what the transmittal of such a letter by any means constituted a crime against the State of Pennsylvania (pp. 16, 17).

The Statutes Involved

"Title 28, U. S. C. A. 1495. Damages for unjust conviction and imprisonment—Claim against United States—The Court of Claims shall have jurisdiction to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.

"Title 28, U. S. C. A. 2513. Unjust conviction and imprisonment—(a) Any person suing under section 1495 of this title must allege and prove that:

(1) His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and

(2) He did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States, or any State, Territory or the District of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.

(b) Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.

(c) No pardon or certified copy of a pardon shall be filed with the Court of Claims unless it contains recitals that the pardon was granted after applicant had exhausted all recourse to the courts and that the time for any court to exercise its jurisdiction had expired.

(d) The Court may permit the plaintiff to prosecute such action in forma pauperis.

(e) The amount of damages awarded shall not exceed the sum of $5,000."

Basis of Jurisdiction

The petition seeks review of a judgment of the United States Court of Claims, pursuant to Section 1255, Title 28 U. S. C. A.

The questions presented involve the interpretation of Section 2513 of Title 28 U. S. C. A.

Questions Presented

1. Was the interpretation put on Section 2513 of Title 28 U. S. C. A. by the Court of Claims correct?

2. Was that interpretation at variance with the statute as a whole?

3. Was the decision of the Court of Claims correct in holding that the mandate and opinion of the Supreme

Court of the United States failed to establish all of the facts necessary to establish a right of recovery under Section 2513 of Title 28 U. S. C. A.?

4. Did the Court of Claims properly dismiss the petition?

Reasons for Writ

Sections 1495 and 2513 of Title 28, U. S. Code, constitute the only humanitarian statutes giving any form of relief to a person who has been erroneously convicted of a crime in the courts of the United States.

It is felt that the interpretation placed upon the statutes by the Court of Claims is not the interpretation which Congress intended and makes the statutes completely unworkable.

Those sections have never been interpreted by this Court and it is felt that the interpretation placed thereon by the Court of Claims should be reviewed by this Court.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. ....

JESSE MILLER SINCLAIR,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES COURT OF CLAIMS

POINT I

The interpretation put on the statute by the Court of Claims is plainly at variance with the statute as a whole and makes the statute useless and unworkable.

If the interpretation put on Section 2513 of Title 28 U. S. C. A. is upheld the statute is completely useless.

The Court of Claims found:

> "it must also be inferred therefrom that the act which he was charged with having committed 'constituted no offense against the United States' " (p. 16).
>
> * * * * *
>
> "Of course the mailing of the letter constituted no crime against the State of Pennsylvania, but whether

> or not the transmittal of such a letter by any means constituted a crime against the State of Pennsylvania, we do not know" (p. 16).

Having thus found that the mandate of this Court established that the sole act charged in the indictment, *i. e.*, the mailing of the letter, constituted no crime under the laws of the United States or of the State of Pennsylvania the Court of Claims denied a recovery because "we do not know" "whether or not the transmittal of such a letter by any means constituted a crime against the State of Pennsylvania" (p. 17).

The sharpness of the distinction made by the Court of Claims in the proof required completely nullifies the statute and is unwarranted. Presumably the Court of Claims is of the opinion that the Federal Court in which the accused is found not guilty must find substantially *in haec verba* that the accused's conduct did not constitute a crime under the laws of the State as well as the United States (pp. 16-17). The Federal Courts are without jurisdiction to enforce the laws of the State and to require such a judgment from any Federal Court is to nullify the statute. The Court of Claims recognized that fact in the following language:

> "It may be that proof of such facts by the certificate of a court not having jurisdiction of violations of the laws of a State is a requirement which should not be demanded, but it was demanded by Congress as a condition to plaintiff's right to recover, and no one other than Congress can lift the requirement" (p. 17).

Petitioner respectfully urges that an interpretation of a statute which makes the statute an inane and unworkable jargon of words is to be avoided.

> *United States et al.* v. *American Trucking Ass'ns, Inc., et al.*, 310 U. S. 534, 543.

There is no necessity for such an interpretation. The purpose of the restriction is plain. Congress never intended that a person convicted in the Federal Courts and subsequently discharged because the acts charged constituted a crime under the laws of a State rather than under the laws of the United States should be able to recover under this statute.

In the instant case the crime charged was exclusively a matter within the jurisdiction of the laws of the United States, *i. e.*, the mailing of allegedly improper matter. On the basis of that fact the Court of Claims has found that petitioner adequately established by the mandate of this Court that his conduct in mailing the letter did not constitute a crime under the laws of the United States or of the State of Pennsylvania (p. 16). It points to no law of the State of Pennsylvania which might have been violated by the mailing of the letter. It says that the "transmittal of such a letter by any means" may be a crime under the State laws (p. 16). A complete answer to that seems to be that the statute only requires that the petitioner establish that his acts "in connection with such charges constituted no offense." The only means for transmittal alleged was by mail. Obviously if the mails were used for that purpose no other means were used and certainly the use of any other means would not be "in connection with" the charge made.

POINT II

The Court of Claims erred in dismissing the petition on motion for summary judgment.

The petition alleged that the mandate of this Court establishes "that plaintiff's acts, deeds or omissions in connection with said charge constituted no offense against the United States, or any State, Territory or the District of Columbia" (p. 3).

The Court of Claims referring to that allegation said:

> "The allegation in plaintiff's petition that it was not a crime against the State of Pennsylvania is of course a conclusion which is not binding on a motion such as the one before us" (p. 17).

It further said: "* * * We do not know" "whether or not the transmittal of such a letter by any means constituted a crime against the State of Pennsylvania" (p. 16). We thus have the absurd situation where a Federal Court has no jurisdiction to issue a judgment or certificate holding that the conduct did not constitute a crime under the State laws and the Court of Claims, refuses to even inquire as to whether there is in existence any State law which could possibly have been violated by the admitted act of mailing a specific letter.

On the motion for summary judgment the Attorney General made no attempt to point to any particular State statute which could possibly have been violated by the act charged.

The act of the mailing of the letter necessarily must be assumed to have been committed. This Court has decided that the mailing of that letter was not a crime. *Sinclair* v. *United States*, 338 U. S. 908. Since no Federal Court could adjudicate with respect to whether the mailing of that letter was a crime under any State law it would seem only reasonable that on the trial of the action petitioner should at least be permitted to establish that there was no State law which could have been violated by that act.

The Court of Claims has held that the allegation that such act did not constitute a crime under the laws of the State of Pennsylvania was a conclusory statement, not

binding on it on such a motion for summary judgment (p. 17). We know of no way of alleging more specifically innocence under a law which does not exist.

Surely there comes a point beyond which petitioner need not go in establishing his innocence. There must come a time when any one questioning that innocence must come forward either with an allegation of acts which constitute a crime or at least with a suggestion of some law which might have been violated by the conceded acts.

In *Culpepper* v. *State,* 4 Okl. Cr. 103, 111, pages 679, 681, 682, 31 L. R. A. N. S. 1166, 140 Am. St. Rep. 668, the Court said:

> "And Prof. Thayer in his famous lecture on the Presumption of Innocence in Criminal Cases, which is generally recognized as the best treatment of the subject extant, says:
>
> "'* * * It takes possession of this fact, innocence, as not now needing evidence, as already established prima facie, and says: "Take that for granted. Let him who denies it go forward with his evidence."'"

See also:

> *Holt* v. *United States,* 218 U. S. 245;
> *British American Assurance Co.* v. *Bowen,* 134 F. (2d) 256 (C. A., 10th Cir.);
> *Gompers* v. *Bucks Stove & R. Co.,* 221 U. S. 418.

The further reason assigned by the Court of Claims for dismissing the petition, *i. e.,* that it "does not appear from the opinion and mandate of the Supreme Court that plaintiff's misconduct or neglect did not bring about his

prosecution," is obviously untenable (p. 17). It is clearly impossible in the circumstances of this case that any conduct of petitioner's could have brought about his conviction when this Court has decided that his conduct did not constitute a crime.

The petitioner prays and respectfully submits that this Court grant certiorari herein.

April 15, 1953.

EDWARD L. P. O'CONNOR,
Attorney for Petitioner.

THOMAS A. MCDONALD,
Of Counsel.